

VIRGIN ISLANDS WATER AND POWER AUTHORITY
POST OFFICE BOX 1450
SAINT THOMAS
U.S. VIRGIN ISLANDS 00804



CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

The Proceeding Agreement is a properly negotiated agreement between all parties involved. Any marks, changes, white out, or deletions without the expressed written permission from all parties involved shall make this Agreement null and void.

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT ("NDA" or "Agreement") is entered into by and between [REDACTED] (the "Offeror"), and the Virgin Islands Power and Water Authority ("VIWAPA") (collectively, the "Parties"), and shall become effective upon the signature of all parties.

WITNESSETH:

WHEREAS, VIWAPA has or intends to issue a Request for Proposal ("RFP") for certain services, designated PR-04-25. The Offeror has submitted or intends to submit a proposal in response to the RFP. In connection with the RFP process, VIWAPA may disclose or otherwise grant the Offeror access to information, including but not limited to, valuable business information, security-sensitive information, personal information of VIWAPA's customers, and other proprietary or protected information. Information disclosed to the Offeror is for its sole use in connection with responding to the RFP; and

WHEREAS this agreement is supplemental to the RFP and shall be interpreted in a manner that is consistent with and supportive of the RFP. Terms in the RFP relating to confidentiality remain in full force and effect to the extent they are not in conflict with the terms herein; and

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which the parties hereto acknowledge, the Parties agree as follows:

1. Definition of Confidential Information. “Confidential Information” refers to information that (i) is maintained in confidence by or on behalf of VIWAPA, and (ii) disclosed or otherwise accessed by the Offeror, in connection with the Offeror’s work for or with VIWAPA. Such work may be performed pursuant to one or more separate contracts between the parties. Confidential Information may be disclosed or accessed in written form, electronically, orally, or visually presented.

Confidential Information shall include any private customer information (PCI) which would allow the identification of or location designation of a customer.

Information that is made available to the Offeror in connection with this agreement will not be considered Confidential Information unless the information is either: (a) so identified by an appropriate legend indicating its confidential nature; or (b) identified by VIWAPA as confidential information at the time of disclosure and confirmed as such by written summary provided to the Offeror either prior to or within 30 days following the original disclosure. This marking requirement does not apply to information that would be recognized by a reasonable person familiar with the type of information in question as clearly being Confidential Information.

2. Use and Protection of Confidential Information. The Offeror shall limit disclosure of any Confidential Information to individuals who have a need to know such Confidential Information in connection with business discussions and/or contracted-for work between the Parties, and only for that purpose, *provided that* such individuals have been made aware of this agreement and the obligations herein regarding such Confidential Information (such individuals to be referred to herein as “Representatives”). The Offeror shall not make any other use, in whole or in part, of any such Confidential Information without the prior written consent of VIWAPA. The Offeror shall be responsible for any breach of this agreement by any of its Representatives. Should any of the Offeror’s

Representatives breach this agreement, the Offeror shall be equally liable to VIWAPA as if it had committed the breach.

To the extent the Offeror has been provided Confidential information, including PCI, the Offeror agrees not to utilize such information for purposes of marketing services or product offerings to VIWAPA's retail electric customers.

The Offeror further agrees to: (i) keep and maintain all Confidential Information strictly confidential, using such commercially reasonable care as is appropriate to avoid unauthorized access, use, or disclosure of such information, including implementing reasonable administrative, physical, and technical safeguards designed to protect such information, but no less rigorous than that used to safeguard its own information; and (ii) comply with all state and federal privacy and data protection laws and regulations applicable to the Offeror, including the collection, access, use, storage, disposal, and disclosure of Confidential Information.

3. Compelled Disclosure of Confidential Information. Where the Offeror receives a lawful request or order to disclose Confidential Information, including without limitation, pursuant to the requirements of a regulatory or governmental agency, subpoena, court order, discovery, or other operation of law, the Offeror will not release the requested Confidential Information sooner than ten days (or such shorter amount of days as the law will allow, if the law does not allow for ten days) after giving VIWAPA written notice (including by electronic mail) to allow VIWAPA to obtain an order preventing its release. The Offeror will cooperate in good faith in any such effort or pursuit. In the event that no

such protective order is obtained within the aforementioned period, the Offeror is permitted to comply with the request for disclosure without liability under this agreement.

4. Exceptions to Confidentiality Obligations. Except as required by applicable federal, state, or local law or regulation, the Offeror's obligations under this agreement do not extend to:

- a. Information which, at the time of disclosure, is in the public domain;
- b. Information which shall become part of the public domain after disclosure other than as a consequence of a breach of this agreement;
- c. Information, which is obtained from a third person who, insofar as is known to the Offeror, is not prohibited from transmitting the information;
- d. Information which was already known by the Offeror prior to its disclosure; or
- e. Information that is disclosed by the Offeror with VIWAPA's prior written approval.

5. Duration of Agreement. This agreement and the Offeror's duty to hold VIWAPA's Confidential Information in confidence shall commence on the Effective Date and shall remain in effect until one of the following occurs: (i) all Confidential Information disclosed under this agreement becomes publicly known and made generally available through no action or inaction of the Offeror; (ii) the Offeror no longer possesses any Confidential Information disclosed under this agreement; or (iii) VIWAPA sends the Offeror written notice releasing the Offeror from the confidentiality requirements of this agreement.

6. Return or Destruction of Confidential Information. VIWAPA will notify the Offeror when the RFP process has concluded, which may not involve a contract award. Within ten business days of the date of this notice, the Offeror shall either (i) return and redeliver

to VIWAPA all tangible material embodying Confidential Information in any form whatsoever that is in their possession or the possession of any Representatives, including notes, summaries, memoranda, drawings, manuals, records, excerpts, or derivative information or (ii) destroy any of the foregoing material embodying Confidential Information; *provided however* that the Offeror may retain such of its documents as are necessary to enable it to comply with applicable document retention laws and policies; and *provided further* that the Offeror is not required to destroy or alter any computer archival and backup tapes or archival and backup files so long as such tapes and files are created in the ordinary course of business. In each case any Confidential Information so retained will remain subject to the obligations and restrictions contained in this agreement.

7. Notice of Breach. The Offeror shall notify VIWAPA immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the Offeror or its Representatives, whether such disclosure occurs through action or inaction, and shall assist VIWAPA to regain possession of Confidential Information and prevent its further unauthorized use. The Offeror shall cooperate in prosecuting any claims against third parties for unauthorized use and shall bear all costs associated with pursuing those claims. VIWAPA, in addition to any money damages, shall be entitled to obtain an injunction prohibiting the further breach of this agreement without the necessity of posting or filing a bond or other security, even if otherwise required.

8. Injunctive Relief. Each party acknowledges that disclosure or use of Confidential Information in violation of this agreement could cause irreparable harm to VIWAPA for which monetary damages may be difficult to ascertain or be an inadequate remedy.

Therefore, each party will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of this agreement.

9. Representations and Warranties. VIWAPA warrants that it has the right to disclose the Confidential Information to the Offeror. EXCEPT FOR THE FOREGOING, ALL CONFIDENTIAL INFORMATION DISCLOSED PURSUANT TO THIS AGREEMENT IS PROVIDED ON AN "AS IS" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE. THE OFFEROR SHALL USE AND RELY UPON VIWAPA'S CONFIDENTIAL INFORMATION AT THEIR SOLE RISK AND EXPENSE.

10. Ownership of Confidential Information. All Confidential Information will remain the exclusive property of VIWAPA, and no license or conveyance of any right under any copyright, patent, or other intellectual property right of VIWAPA is granted to the Offeror under this agreement, other than the limited right to review the Confidential Information as provided above.

11. Entire Agreement. This agreement constitutes the entire understanding between the parties and supersedes and cancels any and all prior or contemporaneous negotiations, understandings, and agreements, whether oral or written, between the parties, with respect to the subject matter hereof.

12. Amendments. This agreement may not be amended or modified, and no obligation may be waived, except by a writing expressly referencing this agreement and signed by authorized representatives of all parties.

13. No Waiver. The invalidity or unenforceability of any provision or provisions of this agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect. No failure by either party to exercise any right arising from a default by the other party shall impair that right or constitute a waiver of it. No waiver by either party of any covenant to be performed by the other shall constitute a waiver of any later breach or covenant.

14. Assignment. Neither party may directly or indirectly assign or transfer its rights under this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15. Governing Law. This agreement shall be governed by, and construed in accordance with, the laws of US Virgin Islands, without regard to conflict of laws or choice of laws provisions. The parties hereby consent to jurisdiction in the US Virgin Islands and agree that the courts within the US Virgin Islands will have exclusive jurisdiction over any disputes or claims arising out of or related to this agreement.

16. Headings. The paragraph headings used in this agreement are for reference only and shall not be used or relied upon in the interpretation of this agreement.

17. Counterparts. This agreement may be executed in counterparts, which when taken together will constitute one and the same instrument. Any such counterpart may be a facsimile or electronic transmission copy thereof, which shall be as valid and effectual as the original of that counterpart.

18. Effectiveness; Date. This agreement will become effective when all parties have signed it, and the Effective Date will be the date this agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature).

SIGNATURE PAGE TO FOLLOW

[COMPANY NAME]

WITNESS

BY:
TITLE:

V.I. WATER AND POWER AUTHORITY

WITNESS

KARL KNIGHT Date
Executive Director (CEO)

APPROVED AS TO LEGAL SUFFICIENCY:

Patricia Quinland, ESQ. Date
Assistant General Counsel